UNITED STATES PATENT AND TRADEMARK OFFICE

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FAEGRE & BENSON LLP
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EXAMINER
NAJARIAN, LENA

ART UNIT	PAPER NUMBER
3686	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

e-OfficeActionBSC@faegre.com
dweiss@faegre.com

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _20 April 2009_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1,2,4-8,10-24,26,27 and 29_ is/are pending in the application.

    4a) Of the above claim(s) _22-24,26,27 and 29_ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1,2,4-8 and 10-21_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _See Continuation Sheet_.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :20090216; 20080208; 20051109; 20040726.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I (claims 1, 2, 4-8, and 10-21) in the reply filed on 4/20/09 is acknowledged.

2. Claims 22-24, 26, 27, and 29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/20/09.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-2 and 10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

5. In the present case, claims 1-2 and 10 only recite an abstract idea. Claim 1 recites a "system" which may merely be software according to Applicant's specification. Claim 1 fails to define any structural or functional interrelationships between the system and other computer elements to permit the system's functionality to be realized.

For reasons given above, the claimed "system" appears merely to be software components that are non-statutory functional descriptive material.

In addition, for a claimed invention to be statutory, it must produce a useful, concrete, and tangible result. In the present case, claim 1 recites a useful and concrete (i.e. translates data) but not tangible result for there is no provision to permit the system's functionality to be realized.

Claim Rejections - 35 USC § 112

6.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7.   Claims 4-8 and 11-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8.   Claim 4 recites the limitation "the one of a plurality of implantable medical device types" in lines 4-6. There is insufficient antecedent basis for this limitation in the claim.

9.   Claim 5 recites the limitation "the second processor" in line 2. There is insufficient antecedent basis for this limitation in the claim.

10.   Claim 11 recites the limitation "the one of the implantable medical devices" in line 11. There is insufficient antecedent basis for this limitation in the claim.

11.   Claims 6-8 and 12-21 incorporate the deficiencies of claims 4 and 11, through dependency, and are also rejected.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1, 2, 4-8, and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Webb (US 6,644,322 B2).

(A) Referring to claim 1, Webb discloses a system for translating medical data, the system comprising:

a first interpretation system, wherein the first interpretation system is operable to receive a first encoded data set received from a first implantable medical device and to provide a first decoded data set (col. 7, lines 52-64 of Webb);

a second interpretation system, wherein the second interpretation system is operable to receive a second encoded data set from a second implantable medical device and to provide a second decoded data set (col. 7, line 64 – col. 8, line 42 of Webb);

a first data abstraction engine, wherein the first data abstraction engine is operable to receive the first decoded data set from the first interpretation system (col. 8, lines 34-64 of Webb);

a second data abstraction engine, wherein the second data abstraction engine is operable to receive the second decoded data set from the second interpretation system (col. 8, lines 34-64 of Webb); and

wherein the first data abstraction engine and the second data abstraction engine provide a first abstracted data set and a second abstracted data set, respectively, in a common data format (col. 8, lines 34-64 of Webb).

(B) Referring to claim 2, Webb discloses wherein the system further comprises: a first communication link, wherein the encoded data set received from the first implantable medical device is received via the first communication link; and a second communication link, wherein the encoded data set received from the second implantable medical device is received via the second communication link (col. 6, lines 5-39 and col. 9, lines 21-39 of Webb).

(C) Referring to claim 4, Webb discloses wherein the system further comprises a system server, wherein the system server includes a processor and a computer readable medium, and wherein the computer readable medium includes instructions executable by the processor to: receive the first encoded data set from the one of a plurality of implantable medical device types via a communication network; identify the one of the plurality of medical device types; and communicate the first encoded data set

via the first communication link to the first interpretation system (Fig. 1, col. 4, lines 16-36, col. 7, lines 52-64, col. 9, lines 21-39, and col. 20, line 66 – col. 21, line 13 of Webb).

(D) Referring to claim 5, Webb discloses wherein the computer readable medium further includes instructions executable by the second processor to: store the first encoded data set to a raw database (col. 8, lines 16-33 of Webb).

(E) Referring to claim 6, Webb discloses wherein the computer readable medium further includes instructions executable by the processor to: receive the first abstracted data set; receive the second abstracted data set; and store the first abstracted data set and the second abstracted data set in a comprehensive database (col. 8, lines 16-64 of Webb).

(F) Referring to claim 7, Webb discloses wherein the computer readable medium further includes instructions executable by the processor to: receive the first abstracted data set; receive the second abstracted data set; distribute at least a portion of the first abstracted data set and the second abstracted data set to a first recipient; and distribute at least a portion of the first abstracted data set and the second abstracted data set to a second recipient (col. 8, lines 16-64 of Webb).

(G) Referring to claim 8, Webb discloses wherein the first recipient is a first subset database, and the second recipient is a second subset database (col. 13, lines 5-42 and col. 14, liens 11-18 of Webb).

(H) Referring to claim 10, Webb discloses wherein the common data format is a

standardized format (col. 7, line 52 – col. 8, line 15 of Webb).

Claim Rejections - 35 USC § 103

14.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15.   Claims 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Webb in view of Riff et al. (US 2002/0026223 A1).

(A) Referring to claim 11, Webb discloses a system for translating medical data, the

system comprising (abstract of Webb):

a data translation system, wherein the data translation system comprises a

processor and a computer readable medium, and wherein the computer readable

medium includes instructions executable by the processor to (Fig. 1 and col. 7, lines 52-

64 of Webb):

receive an encoded data set from one of a plurality of implantable medical device

types via one of a plurality of ports (col. 7, lines 52-64, Fig. 8, and col. 13, lines 36-42 of

Webb); and

select a conversion utility, wherein selection of the conversion utility is based at

least in part upon the encoded data set received from the one of the implantable

medical devices; spawn the conversion utility; and translate the encoded data set to a decoded data set (Fig. 9, col. 22, lines 37-57, col. 8, lines 1-64, and col. 7, lines 52-64 of Webb).

Webb does not expressly disclose wherein each of the plurality of ports is assigned to one of the implantable medical device types and wherein selection is based at least in part upon the port.

Riff discloses wherein each of the plurality of ports is assigned to one of the implantable medical device types and wherein selection is based at least in part upon the port (para. 22 and para. 25 of Riff).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Riff within Webb. The motivation for doing so would have been to take appropriate action according to the particular IMD in use (para. 25 of Riff).

(B) Referring to claims 12 & 18, Webb discloses wherein the processor is a first processor, and wherein the computer readable medium is a first computer readable medium, wherein the system further comprises a system server, wherein the system server includes a second processor and a second computer readable medium, and wherein the second computer readable medium includes instructions executable by the processor to: receive the encoded data set from the one of a plurality of implantable medical device types via a communication network and identify the one of the plurality of medical device types (Fig. 1, col. 7, lines 52-64, col. 9, lines 21-39, and col. 20, line

66 – col. 21, line 13 of Webb); and direct the encoded data set to the one of the plurality

of ports corresponding to the one of the plurality of implantable medical device types

(Fig. 8 and col. 13, lines 36-42 of Webb).

(C) Referring to claim 13, Webb discloses wherein the second computer readable

medium further includes instructions executable by the second processor to: store the

encoded data set from the one of the plurality of implantable medical device types to a

raw database (col. 18, lines 16-33 of Webb).

(D) Referring to claim 14, Webb discloses wherein the computer readable medium

further includes instructions executable by the processor to: abstract the decoded data

set to an abstracted data set with elements common to each of the plurality of

implantable medical device types (col. 8, lines 16-64 of Webb).

(E) Referring to claim 15, Webb discloses wherein the computer readable medium

further includes instructions executable by the processor to: communicate the

abstracted data set to a recipient selected from a group consisting of: a system server,

a gateway server, and a diagnostic server (Fig. 1, col. 7, line 52 - col. 8, line 15 of

Webb).

(F) Referring to claim 16, Webb discloses wherein the processor is a first processor,

and wherein the computer readable medium is a first computer readable medium,

wherein the system server includes a second processor and a second computer

readable medium, and wherein the second computer readable medium includes

instructions executable by the processor to: receive the abstracted data set; and store

the abstracted format data set to a comprehensive database (Fig. 1 and col. 8, lines 16-64 of Webb).

(G) Referring to claim 17, Webb discloses wherein the processor is a first processor, and wherein the computer readable medium is a first computer readable medium, wherein the system server includes a second processor and a second computer readable medium, and wherein the second computer readable medium includes instructions executable by the processor to: receive the abstracted data set; and distribute at least a portion of the abstracted data set to a recipient (Fig. 1 and col. 8, lines 16-64 of Webb).

(H) Referring to claim 19, Webb discloses wherein the computer readable medium further includes instructions executable by the processor to: store the abstracted data set to a storage area selected from a group consisting of: a comprehensive database, and a subset database (col. 8, lines 16-64 of Webb).

(I) Referring to claim 20, Webb discloses wherein the computer readable medium further includes instructions executable by the processor to: translate the abstracted data set to a selected format data set (col. 7, line 52 – col. 8, line 15 of Webb).

(J) Referring to claim 21, Webb discloses wherein the processor is a first processor, and wherein the computer readable medium is a first computer readable medium, wherein the system further comprises a system server, wherein the system server includes a second processor and a second computer readable medium, and wherein the second computer readable medium includes instructions executable by the processor to:

receive the selected format data set; and communicate the selected format data set to a recipient (Fig. 1 and col. 8, lines 1-64 of Webb).

Conclusion

16.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches a system and method for transferring information relating to an implantable medical device to a remote location (US 6,250,309 B1).

17.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to LENA NAJARIAN whose telephone number is (571) 272-7072. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/L. N./
Examiner, Art Unit 3686
ln
7/2/09

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3686